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Attorneys for Proposed Intervenor Federal Housing Finance Agency

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NEVADA SAND CASTLES, LLC,
Plaintiff,

vs.

GREEN TREE SERVICING LLC;
RECONSTRUCT COMPANY, N.A.; BANK
OF AMERICA, N.A.; PRLAP, INC.; DOES I-
X, inclusive; and ROE BUSINESS ENTITIES
I-X, inclusive,
Defendants.

CASE NO. 2:15-cv-00588-GMN-VCF

**STIPULATION TO ENTRY OF ORDER
AND ~~PROPOSED~~ ORDER
PERMITTING FEDERAL NATIONAL
MORTGAGE ASSOCIATION AND
FEDERAL HOUSING FINANCE
AGENCY, AS CONSERVATOR OF THE
FEDERAL NATIONAL MORTGAGE
ASSOCIATION, TO INTERVENE**

1. The Federal Housing Finance Agency (“FHFA” or “Conservator”), as Conservator for Federal National Mortgage Association (“Fannie Mae”), and Fannie Mae, seek to intervene in the above-captioned action pursuant to 12 U.S.C. § 4617(b)(2)(A)(i) and Fed. R. Civ. P. 24.

2. Fannie Mae asserts ownership in a promissory note and deed of trust recorded against the property that Plaintiff seeks to extinguish by this action.

3. On September 6, 2008, FHFA’s Director appointed the FHFA Conservator of Freddie Mac in accordance with the Housing and Economic Recovery Act of 2008, Pub. L. 110-

289, 122 Stat. 2654 (codified at 12 U.S.C. § 4617) (“HERA”), and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. § 4501, et. seq.).

4. The FHFA, as Conservator, has succeeded to “all rights, titles, powers, and privileges” of Fannie Mae, including its right to sue and be sued in the federal courts. *See* 12 U.S.C. § 4617(b)(2)(A)(i).

5. Accordingly, FHFA asserts that it has an unconditional federal statutory right to intervene in this matter, *see* Fed. R. Civ. P. 24(a)(1), and to assert its interests in a manner consistent with the Conservator’s powers and duties.

6. Pursuant to Fed. R. Civ. P. 24(c), FHFA and Fannie Mae attach as **Exhibit A** their intended Answer.

STIPULATION

FHFA, Fannie Mae, Plaintiff Nevada Sand Castles, LLC, and Defendant Green Tree Servicing LLC, now known as Ditech Financial LLC, through their undersigned attorneys of

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record, hereby stipulate and request that the Court make this stipulation an order of the Court:

The FHFA and Fannie Mae shall be permitted to intervene in the above-referenced action pursuant to 12 U.S.C. § 4617(b)(2)(A)(i) and Fed. R. Civ. P. 24.

DATED this 13th day of January, 2016.

WOLFE & WYMAN LLP

FENNEMORE CRAIG, P.C.

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Mortgage Association*

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*Attorneys for Plaintiff Nevada Sand Castles,
LLC*

ORDER

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE

DATED: January 13, 2016

IT IS HEREBY ORDERED that the Answer and Counterclaims by proposed Intervenor Federal National Mortgage Association and Federal Housing Finance Agency, As Conservator for the Federal National Mortgage Association must be filed on or before January 21, 2016.

Exhibit A

Exhibit A

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NEVADA SAND CASTLES, LLC,
Plaintiff,

vs.

GREEN TREE SERVICING LLC;
RECONSTRUCT COMPANY, N.A.; BANK
OF AMERICA, N.A.; PRLAP, INC.; DOES I-
X, inclusive; and ROE BUSINESS ENTITIES
I-X, inclusive,
Defendants.

and

FEDERAL NATIONAL MORTGAGE
ASSOCIATION; and FEDERAL HOUSING
FINANCE AGENCY, as Conservator of the
Federal National Mortgage Association,
Proposed-Intervenors.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION; and FEDERAL HOUSING
FINANCE AGENCY, as Conservator of the
Federal National Mortgage Association,
Counterclaimants,

vs.

NEVADA SAND CASTLES, LLC,
Counter-Defendant.

CASE NO. 2:15-cv-00588-GMN-VCF

[PROPOSED]

**ANSWER AND COUNTERCLAIMS BY
PROPOSED INTERVENORS FEDERAL
NATIONAL MORTGAGE ASSOCIATION
AND FEDERAL HOUSING FINANCE
AGENCY, AS CONSERVATOR FOR THE
FEDERAL NATIONAL MORTGAGE
ASSOCIATION**

1 Simultaneously with this Answer, the Federal National Mortgage Association (“Fannie
2 Mae”) and the Federal Housing Finance Agency (“FHFA”), in its capacity as Conservator for
3 Fannie Mae, are filing a stipulation jointly with Plaintiff Nevada Sand Castles, LLC (“Plaintiff”),
4 to permit Fannie Mae’s and FHFA’s intervention in this case pursuant to Federal Rule of Civil
5 Procedure 24. In accordance with Rule 24(c), Fannie Mae and FHFA submit this Answer to
6 respond as follows to the Complaint filed by Plaintiff on February 24, 2015.

8 1. Fannie Mae and FHFA admit that a Foreclosure Deed recorded November 4,
9 2013 states that Plaintiff prevailed at a lien foreclosure sale, evidenced by, Paragraph 1 of the
10 Complaint states legal conclusions that do not require a response. Fannie Mae and FHFA are
11 without knowledge or information sufficient to form a belief as to the truth of the remaining
12 allegations within Paragraph 1 of the Complaint.

13 2. Fannie Mae and FHFA admit that a Foreclosure Deed recorded November 4,
14 2013 states that Plaintiff prevailed at a lien foreclosure sale, evidenced by, Paragraph 2 of the
15 Complaint states legal conclusions that do not require a response. Fannie Mae and FHFA are
16 without knowledge or information sufficient to form a belief as to the truth of the remaining
17 allegations within Paragraph 1 of the Complaint.

18 3. Fannie Mae and FHFA are without knowledge or information sufficient to form a
19 belief as to the truth of the allegations within Paragraph 3 of the Complaint. Paragraph 3 also
20 states legal conclusions that do not require a response. To the extent a response is required,
21 denied.

22 4. Fannie Mae and FHFA admit that Green Tree Servicing LLC, which is now
23 known as Ditech Financial LLC is the beneficiary of record of a deed of trust encumbering real
24 property located at 5710 E. Tropicana Ave., #1029, Las Vegas, Nevada 89122; APN 161-21-
25 810-057 (the “Property”).

26 5. Fannie Mae and FHFA are without knowledge or information sufficient to form a
27 belief as to the truth of the allegations within Paragraph 5 of the Complaint.

6. Fannie Mae and FHFA are without knowledge or information sufficient to form a belief as to the truth of the allegations within Paragraph 6 of the Complaint.

7. Fannie Mae and FHFA are without knowledge or information sufficient to form a belief as to the truth of the allegations within Paragraph 7 of the Complaint.

8. Fannie Mae and FHFA are without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Doe and Roe Business Entity defendants within Paragraph 8 of the Complaint. The remainder of Paragraph 8 of the Complaint states legal conclusions that do not require a response. To the extent a response is required, denied.

9. Fannie Mae and FHFA deny the allegations within Paragraph 9 of the Complaint.

10. Paragraph 10 of the Complaint states legal conclusions that do not require a response. To the extent a response is required, denied.

11. Fannie Mae and FHFA are without knowledge or information sufficient to form a belief as to the truth of the allegations within Paragraph 11 of the Complaint.

12. Paragraph 12 of the Complaint states legal conclusions and requests for relief that do not require a response. To the extent a response is required, denied.

FIRST CLAIM FOR RELIEF

13. Fannie Mae and FHFA repeat their responses to Paragraphs 1-12 as if fully stated herein.

14. Paragraph 14 of the Complaint states legal conclusions and requests for relief that do not require a response. To the extent a response is required, denied.

15. Paragraph 15 of the Complaint states legal conclusions and requests for relief that do not require a response. To the extent a response is required, denied.

SECOND CLAIM FOR RELIEF

16. Fannie Mae and FHFA repeat their responses to Paragraphs 1-15 as if fully stated herein.

17. Paragraph 17 of the Complaint states legal conclusions and requests for relief that do not require a response. To the extent a response is required, denied.

18. Paragraph 18 of the Complaint states legal conclusions and requests for relief that do not require a response. To the extent a response is required, denied.

RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

Fannie Mae and FHFA deny that Plaintiff is entitled to any of the relief requested in Paragraphs 1-4 of Plaintiff's Prayer for Judgment.

AFFIRMATIVE DEFENSES

Fannie Mae and FHFA's investigations of these claims are continuing. By this Answer, Fannie Mae and FHFA waive no affirmative defenses and reserves their right to amend the Answer to insert any subsequently discovered affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for which relief can be granted because, among other reasons, Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes an homeowners' association sale from extinguishing Fannie Mae's interest in the Property and preempts any state law to the contrary.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of laches, estoppel, waiver, unjust enrichment, and/or unclean hands.

THIRD AFFIRMATIVE DEFENSE

The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts described in the Complaint were caused in whole or were contributed to in part by reason of the acts, omissions, negligence, and/or intentional misconduct of Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts described in the Complaint were caused in whole or were contributed to in part by reason of the

1 acts, omissions, negligence, and/or intentional misconduct of one or more third parties over
2 whom neither FHFA nor Fannie Mae had control.

3
4 **FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiff has an adequate remedy at law and has, through its own acts and/or omissions,
6 failed to mitigate its damages, the existence of which are denied.

7
8 **SIXTH AFFIRMATIVE DEFENSE**

9 Plaintiff failed to join one or more indispensable parties.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 Neither Fannie Mae nor FHFA breached any duty with regard to Plaintiff.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 The homeowners' association foreclosure sale is void because NRS 116.3116, the statute
14 authorizing the sale, is invalid on its face and as applied because it violated Intervenor's rights to
15 due process under the Fifth and Fourteenth Amendments to the United States Constitution and
16 relevant portions of the Nevada Constitution.

17 **COUNTERCLAIMS**

18 **PARTIES**

19 1. Fannie Mae is a corporation organized and existing under the laws of the United
20 States with its principal office in Washington, DC, and is deemed a citizen of the District of
21 Columbia for jurisdictional purposes in civil cases. 12 U.S.C. § 1717(a)(1).

22 2. Fannie Mae was established as a government-sponsored enterprise to provide
23 stability and liquidity in the secondary mortgage market. 12 U.S.C. § 1716(1), (4). Pursuant to
24 its statutory mission, Fannie Mae owns millions of home loans throughout the United States,
25 many of which are associated with properties located in the State of Nevada.

26 3. FHFA is an agency of the federal government of the United States of America and
27 is located at 400 7th Street, SW in Washington, D.C. FHFA was created on July 30, 2008,
28 pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289,

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1 122 Stat. 2654, codified at 12 U.S.C. § 4617 et seq., to oversee Fannie Mae, Freddie Mac and the
 2 Federal Home Loan Banks.

3 4. On September 6, 2008, the Director of FHFA, authorized by HERA, placed
 4 Fannie Mae into conservatorship and appointed FHFA as Conservator.

5 5. Upon information and belief, Plaintiff/Counter-Defendant Nevada Sand Castles,
 6 LLC (“Plaintiff”) is a Nevada Limited Liability Company with its principle place of business in
 7 Clark County, Nevada.

8 **JURISDICTION AND VENUE**

9 6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
 10 § 1331 because (a) Fannie Mae’s and FHFA’s counterclaims arise under the laws of the United
 11 States and (b) Fannie Mae’s federal corporate charter confers federal question jurisdiction over
 12 claims brought by Fannie Mae. *Lightfoot v. Cendant Mortg. Corp.*, 769 F.3d 681 (9th Cir.
 13 2014). The Court also has original jurisdiction over this action under 28 U.S.C. § 1332(a)(1)
 14 because there is complete diversity of citizenship between the parties, and the amount in
 15 controversy exceeds \$75,000, exclusive of interest and costs.

16 7. Venue is proper in this judicial district because the property that is the subject of
 17 this action is situated in this district.

18 8. This Court has personal jurisdiction over Plaintiff because this lawsuit arises out
 19 of and is connected with Plaintiff’s purposeful purchase of an interest in real property situated in
 20 the County of Clark, State of Nevada and, upon information and belief, Plaintiff’s principal place
 21 of business is in the State of Nevada.

22 **FACTUAL ALLEGATIONS**

23 ***Fannie Mae’s Interest in the Property***

24 9. On or about August 30, 2006, Laura Forman (“Borrower”) obtained a home loan
 25 in the amount of \$89,430.00 (the “Loan”), the repayment of which was secured by a Deed of
 26 Trust (the “Deed of Trust”), recorded in the official records of the Clark County Recorder on
 27 September 20, 2006 as Instrument Number 20060920-0004591.

28 10. The Deed of Trust encumbers the Property.

11220175.1

11. The original lender and beneficiary under the Deed of Trust was Bank of America, N.A. (“BANA”).

12. On or about October 1, 2006, Fannie Mae purchased the Loan and thereby acquired ownership of the Deed of Trust.

13. On or about January 7, 2011 BANA assigned the Deed of Trust to BAC Home Loans Servicing, LP via a Corporation Assignment of Deed of Trust, recorded on January 11, 2011 as Instrument Number 201101110002599.

14. On or about September 5, 2012, the Deed of Trust was re-recorded to correct legal description as Instrument Number 201209050003140.

15. On or about July 22, 2013 BANA, as successor by merger to BAC Home Loans Servicing, LP assigned the Deed of Trust to Green Tree Servicing LLC (“Green Tree”) via an Assignment of Deed of Trust, recorded on August 23, 2013 as Instrument Number 201308230000764.

16. Green Tree is the current servicer of the Loan for Fannie Mae and was the servicer of the Loan for Fannie Mae on November 1, 2013.

17. A central document governing the relationship between Green Tree, as the servicer of the Loan, and Fannie Mae is the Fannie Mae Single-Family Servicing Guide (“Guide”). *See* Guide at A1-1-03.¹

18. The Guide provides that:

The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer’s contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae’s lien, such as notices of foreclosure, tax, and other liens. However, *Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its ... ownership of the mortgage loan,*

¹ The Guide is publicly available on Fannie Mae’s website. An interactive version is available at <https://www.fanniemae.com/content/guide/servicing/index.html>, and archived prior versions of the Guide are available at that URL by clicking “Show All” in the left hand column of that site. While the sections of the Guide have been amended over the course of Fannie Mae’s ownership of the Loan, none of these amendments have changed these sections in a way material to this case. A static, PDF copy of the most recent version of the Guide is available at <https://www.fanniemae.com/content/guide/svc101415.pdf>.

1 *including recordation of a mortgage assignment, or its legal*
 2 *equivalent, from the servicer to Fannie Mae or its designee. In the*
 3 *event that Fannie Mae determines it necessary to record such an*
instrument, the servicer must assist Fannie Mae by

- 4 ☐ preparing and recording any required documentation, such as
 mortgage assignments, powers of attorney, or affidavits; and
- 5 ☐ providing recordation information for the affected mortgage
 6 loans.

7

8 Guide at A2-1-03 (emphasis added).

9 19. Green Tree is now known as as Ditech Financial LLC.

10 ***The HOA Lien and Foreclosure Sale***

11 20. Upon information and belief, Borrower failed to pay the HOA all amounts due to
 12 it. Accordingly, on October 27, 2010, Nevada Association Services, Inc. (“HOA Trustee”), as
 13 agent for the HOA, recorded a Notice of Delinquent Assessment Lien as Instrument Number
 14 201010270002501.

15 21. The Notice of Delinquent Assessment Lien referred to in the above paragraph
 16 recites that “[t]otal amount due as of today’s date is \$1,324.88. This amount includes late fees,
 17 collection fees and interest in the amount of \$764.88.”

18 22. On December 14, 2010, the HOA Trustee, as agent for the HOA, recorded a
 19 Notice of Default and Election to Sell Under Homeowners Association Lien as Instrument
 20 Number 201012140002713.

21 23. Notice of Default and Election to Sell Under Homeowners Association Lien
 22 referred to in the above-paragraph recites that the amount of “past due payments plus permitted
 23 costs and expenses ... is \$2,527.10 as of December 10, 2010 and will increase until [the] account
 24 becomes current.”

25 24. On November 30, 2012, the HOA Trustee, as agent for the HOA, recorded a
 26 Notice of Foreclosure Sale as Instrument Number 201211300002364.

27 25. The Notice of Foreclosure Sale identified in the above paragraph stated that “the
 28 total amount of the unpaid balance of the obligation secured by the property to be sold and

11220175.1

1 reasonable estimated costs, expenses and advances at the time of the initial publication of the
2 Notice of Sale is \$6,272.37.”

3 26. At no time did the Conservator consent to the HOA Sale extinguishing or
4 foreclosing Fannie Mae’s interest in the Deed of Trust. *See*
5 [www.fhfa.gov/Media/PublicAffairs/Pages/](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
6 [Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

7 27. On November 4, 2013, a Foreclosure Deed was recorded as Instrument Number
8 201311040002842 reciting that Plaintiff had prevailed at a lien foreclosure sale conducted on
9 November 1, 2013. The deed indicates a sale price of \$10,000.00.

10 **FIRST CAUSE OF ACTION**

11 **(Declaratory Judgment versus Plaintiff)**

12 28. FHFA and Fannie Mae incorporate by reference the responses of all previous
13 paragraphs, as if fully set forth herein.

14 29. Pursuant to 28 U.S.C. § 2201 and NRS § 40.010, this Court has the power and
15 authority to declare FHFA and Fannie Mae’s rights and interests in the Property.

16 30. FHFA is an agency of the federal government of the United States of America and
17 is also the Conservator for Fannie Mae.

18 31. The Conservator has succeeded by law to all of Fannie Mae’s “rights, titles,
19 powers, and privileges.” 12 U.S.C. § 4617(b)(2)(A)(i).

20 32. During the Conservatorship, “[n]o property of [FHFA] shall be subject to levy,
21 attachment, garnishment, foreclosure, or sale without the consent of the [FHFA], nor shall any
22 involuntary lien attach to the property of [FHFA].” 12 U.S.C. § 4617(j)(3).

23 33. At the time of the foreclosure sale, the Deed of Trust was a first secured interest
24 on the Property as intended by NRS 116.3116(2)(b).

25 34. Fannie Mae’s interest at issue was property of the Conservator. Therefore,
26 applying NRS Chapter 116 or other state law in a manner that extinguishes Fannie Mae’s interest
27 in the Property would violate 12 U.S.C. § 4617(j)(3).

28

35. 12 U.S.C. § 4617(j)(3) preempts any state law that would permit a foreclosure on a superpriority lien to extinguish a property interest of Fannie Mae while it is under FHFA's conservatorship.

36. At no time did Plaintiff, the homeowners' association conducting the foreclosure sale (the "HOA"), the HOA's agent, or any other person or entity obtain consent from FHFA to extinguish the Deed of Trust or otherwise extinguish Fannie Mae's interest.

37. Pursuant to 12 U.S.C. § 4617(j)(3), the foreclosure sale conducted by the HOA could not extinguish Fannie Mae's interest in the Deed of Trust.

38. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201, that 12 U.S.C. § 4617(j)(3) precludes an HOA foreclosure sale from extinguishing Fannie Mae's property interests.

39. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201, that the HOA Sale did not extinguish Fannie Mae's interest in the Deed of Trust.

40. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201, that any interest acquired by Plaintiff through the foreclosure deed is subject to Fannie Mae's Deed of Trust.

SECOND CAUSE OF ACTION

(Quiet Title versus Plaintiff)

41. FHFA and Fannie Mae incorporate by reference the responses of all previous paragraphs, as if fully set forth herein.

42. Pursuant to 28 U.S.C. § 2201 and NRS § 40.010, this Court has the power and authority to resolve the parties' adverse claims in the Property.

43. The Deed of Trust is a first secured interest on the Property as intended by NRS § 116.3116(2)(b).

44. FHFA, as Fannie Mae's conservator, has succeeded by law to all of Fannie Mae's "rights, titles, powers, and privileges." 12 U.S.C. § 4617(b)(2)(A)(i).

45. Plaintiff claims an interest in the Property through its purported purchase of the Property at an HOA foreclosure sale held on November 1, 2013, and claims that the foreclosure sale extinguished the Deed of Trust.

46. Pursuant to 12 U.S.C. § 4617(j)(3), “[n]o property of [FHFA] shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of [FHFA], nor shall any involuntary lien attach to the property of [FHFA].”

47. Based on the adverse claims being asserted by the parties, FHFA and Fannie Mae are entitled to a judicial determination regarding the rights and interests of the respective parties to the case.

48. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201 and NRS § 40.010, that the HOA Sale did not extinguish Fannie Mae’s interest in the Deed of Trust.

49. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201 and NRS § 40.010, that any interest acquired by Plaintiff through the foreclosure deed is subject to Fannie Mae’s Deed of Trust.

PRAYER FOR RELIEF

WHEREFORE, FHFA and Fannie Mae pray for the following relief:

1. That Plaintiff take nothing by way of its Complaint;
2. That the Court declare that 12 U.S.C. § 4617(j)(3) preempts any Nevada law that would permit a foreclosure on a superpriority lien to extinguish Fannie Mae’s interest while it is under FHFA’s conservatorship;
3. That the Court declare that the HOA sale did not extinguish Fannie Mae’s interest in the Property and thus did not convey the Property free and clear to Plaintiff;
4. That the Court declare that any interest of Plaintiff is subject to the Deed of Trust;
5. That Plaintiff’s claim for injunctive relief be denied;
6. That FHFA be awarded reasonable attorneys’ fees and costs; and

7. That FHFA receive such other relief as the Court deems just and proper.

DATED this _____ day of January, 2016.

WOLFE & WYMAN LLP

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By: /s/
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